

1 KEVIN V. RYAN (CSBN 118321)
2 United States Attorney

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION
11

12 UNITED STATES OF AMERICA,)

13 Plaintiff,)

14 v.)

15 JOHN O'NEIL,)

16 Defendant.)
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No. CR-04-0118 PJH

VIOLATION: Title 18, United States Code,
Sections 1832(a)(5) and 371 -- Conspiracy to
Commit Theft and Downloading of Trade
Secrets, Fraud in Connection with
Computers, and Interstate Transportation of
Stolen Property

SAN FRANCISCO VENUE

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19 SUPERSEDING INFORMATION

20 The United States Attorney charges:

21 BACKGROUND

22 At all times relevant to this Information:

23 1. Business Engine Software Corporation ("BES") was a privately funded company
24 which manufactured, licensed, and provided enterprise application software products and
25 services that allow companies to manage projects, resources, and budgets. It had offices in: San
26 Francisco and Ontario, California; Virginia Beach, Virginia; New York, New York; Chicago,
27 Illinois; King of Prussia, Pennsylvania; Belgium; the United Kingdom; and India.

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2. Robert Michael McKimmey was employed by BES as the Chief Technology Officer in its Virginia Beach, Virginia office. McKimmey was also a member of BES's Board of Directors and one of BES's equity owners.

3. William F. McMenamin was employed by BES as Executive Vice President of Worldwide Sales in its San Francisco, California office. Defendant McMenamin was also a member of BES's Executive management team.

4. Defendant John O’Neil was employed by BES as its Chief Executive Officer, and was also a member of BES’s Board of Directors and one of BES’s equity owners.

5. Niku Corporation (Niku) was a publicly traded company which manufactured, licensed, and provided enterprise application software and services for companies to manage and govern their projects, resources, and budgets. It had twenty offices in the United States and overseas including its headquarters in Redwood City, California and offices in: Petaluma, California; New York, New York; Chicago, Illinois; Atlanta, Georgia; Pittsburgh, Pennsylvania; Lovina, Michigan; Exeter, New Hampshire; the United Kingdom; the Netherlands; France; Germany; and Australia. Niku was one of BES's direct competitors in the enterprise software industry.

THE CONSPIRACY

6. Beginning on date unknown but at least by October of 2001, and continuing to in or about July of 2002, in the Northern District of California and elsewhere, the defendant

JOHN O'NEIL

did knowingly and intentionally conspire and agree with Robert Michael McKimney and William F. McMenamin to commit the following offenses: theft and downloading of trade secrets, in violation of 18 U.S.C. §§ 1832(a)(1) and (a)(2); fraud in connection with computers, in violation of 18 U.S.C. § 1030(a)(4); and interstate transportation of stolen property, in violation of 18 U.S.C. § 2314.

7. It was part of the conspiracy that the co-conspirators would and did knowingly, and with intent to defraud, access victim Niku's computer network and applications without authorization, and by means of such conduct further the intended fraud, and obtain things of

1 value including Niku trade secrets.

2 8. It was further part of the conspiracy that the co-conspirators would and did steal, and
3 without authorization knowingly take by fraud, artifice, and deception, Niku trade secrets.

4 9. It was further part of the conspiracy that the co-conspirators would and did knowingly
5 download, copy, and transmit Niku trade secrets without authorization.

6 10. It was further part of the conspiracy that the co-conspirators would and did
7 knowingly transport, transmit, and transfer in interstate commerce goods, wares, and
8 merchandise having a value exceeding \$5,000, knowing the same to have been stolen,
9 converted, and taken by fraud from Niku.

10 11. It was further part of the conspiracy that the co-conspirators would and did: (a)
11 access Niku's computer network and applications without authorization; (b) steal, download,
12 and copy things of value including Niku trade secrets; and (c) transmit some of those things of
13 value including Niku trade secrets to each other and to other BES officers and employees – all
14 so that BES could obtain and maintain a competitive edge over its direct competitor, Niku.

15 OVERT ACTS

16 12. In furtherance of the conspiracy and to effect its objects, the defendant and his co-
17 conspirators committed, among others, the following overt acts in the Northern District of
18 California and elsewhere:

19 a. Beginning in or about October of 2001, and continuing to in or about July of
20 2002, McKimmey knowingly accessed Niku's computer network and applications without
21 authorization;

22 b. Beginning in or about October of 2001, and continuing to in or about July of
23 2002, McKimmey stole, downloaded, and copied things of value including trade secrets from
24 Niku's computer network and applications;

25 c. Beginning in or about October of 2001, and continuing to in or about July of
26 2002, McKimmey provided trade secrets and things of value stolen from Niku to defendant
27 O'Neil, McMenamin and other BES officers and employees to allow BES to obtain a
28 competitive advantage over Niku;

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1 d. Defendant O'Neil encouraged McKimmey and McMenemy to
2 misappropriate and use trade secrets and things of value stolen from Niku to allow BES to
3 obtain a competitive advantage over Niku;

4 e. Beginning in or about October of 2001, and continuing to in or about July of
5 2002, McMenemy distributed trade secrets and things of value stolen from Niku to other BES
6 officers and employees to allow BES to obtain a competitive advantage over Niku.

7 f. Beginning in or about October of 2001, and continuing to in or about July of
8 2002, defendant O'Neil, his co-conspirators, and others utilized the trade secrets and other
9 things of value stolen from Niku to allow BES to obtain a competitive advantage over Niku.

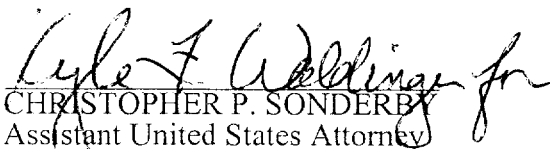
10 All in violation of Title 18, United States Code, Sections 1832(a)(5) and 371.

11 DATED: November 29, 2005

12 KEVIN V. RYAN
13 United States Attorney

14 
15 EUMIL L. CHOI
16 Chief, Criminal Division

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18 Approved as to Form:

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20 CHRISTOPHER P. SONDERBY
21 Assistant United States Attorney
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